



Unfetter Creativity in Prisons

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The United States imprisons nearly **1.8 million people**, more than any other country in the world. This incarcerated population is larger than that of Phoenix, the nation's fifth largest city. For legislators concerned with criminal justice reform, the critical question is: What social value is derived from the 3.74 billion workday hours spent behind bars each year?

The Reality of Prison Labor

Prisons typically pay pennies per hour to engage residents in mandatory duties such as cooking, plumbing, painting, landscaping, and cleaning. In federal prisons, inmates can seek factory work at a tad over a dollar an hour through the federal prison industries program, **UNICOR**, which promises "life skills that change lives." The practice of exploiting prison labor for little, if any, compensation is perfectly legal under the Thirteenth Amendment, which abolished slavery, except as punishment for a crime. This exception provided cover for the notorious prison farms, convict leasing, and chain gangs that emerged in the South after the Civil War.

Shifting from Forced Labor to Intellectual Empowerment

Research at the intersection of intellectual property protection, criminal justice, and social justice reveals a compelling opportunity to shape future carceral policy in a more humane direction. A more enlightened carceral policy could offer dignity to the prison resident, lessen tensions within the prison environment, and add both cultural and monetary value to society by releasing creative products made in prison to the public marketplace. Consider how today's massive prison population is systemically excluded from contributing to the nation's innovation ecosystem. In fact, the only larger segment of the population ever excluded from creative enterprise was also exploited for its labor: people in slavery, which accounted for over 20% of the population at the time of the Revolution and reached nearly four million in numbers during the Civil War.

Such exclusion is antithetical to the aim of the Constitution's Intellectual Property Clause (Article I, Section 8, Clause 8), which empowers Congress to promote science and the useful arts by providing authors and inventors with exclusive rights to their creations for a limited time. This monopoly protection--secured by copyright and patent registration--provides an incentive for *all* Americans to write and invent in ways that raise the quality of life in the country and give the nation a powerful, global competitive advantage. While it may be practically challenging for incarcerated people to invent new and useful devices eligible for patent protection, there are virtually no physical barriers to creating works through writing, the visual arts, music, and other expressive forms protected by copyright.

Indeed, some great works have emerged from behind bars. *Letter from Birmingham Jail? De Profundis? Civil Disobedience? The Gulag Archipelago? And Orange Is the New Black?* All written in or after prison. Far more works

written by lesser known authors are included in numerous prison anthologies. Works of visual art are documented in extraordinary collections, notably *Marking Time: Art in the Age of Mass Incarceration*. Music from prison is also found in the Alan Lomax recordings of prison labor in the South at the Library of Congress and the Smithsonian Institution's collection of "Negro Prison Camp Worksongs." Today, the nonprofit FREER Records is recording music composed and performed by people in prison.

Pioneers in the field of arts-in-corrections document how engaging residents in creative enterprises reduces tensions in prison, builds life skills for community re-entry, and reduces recidivism rates. Helping inmates learn creative skills and make their products available to the public can allow them to save financial resources for re-entry and also prepare them for work in the creative economy following completion of their prison terms. They can emerge from prison positioned to further contribute to the nation's cultural wealth and add value to the economy.

Toward a More Perfect Union

What would it take to unfetter creativity in American prisons?

Federal legislation calling for a *Carceral Creativity Policy* could encourage and support prison residents in 98 federal facilities to learn and apply creative skills, protect their intellectual property, and disseminate their works to the public. Such legislation could include the following key elements:

- **Expand Arts-in-Corrections Programs:** Enrich existing HobbyCraft programs with arts-in-corrections initiatives offering residents access to skills in writing, visual arts, music, and more.
- **Provide Copyright Registration Assistance:** Equip prison libraries to help residents protect their intellectual property by registering their creative works under copyright law.
- **Collaborate with Nonprofit Organizations:** Partner with organizations like PEN America, the American Prison Writing Archive, and FREER Records to distribute creative works from prison to the public.
- **Promote National Competition:** Spark creativity by supporting programs like the PEN Prison Writing Awards to recognize exceptional talent and the prisons fostering such creativity.
- **Establish a Federal Credit Union for the Justice Involved:** Establish a financial institution to provide banking services, including those related to the sale and distribution of prison-created works, to incarcerated artists and justice-involved individuals across the country.

Federal legislative innovation might spark similar legislation at the state level, where 50 state Departments of Corrections oversee some 1,566 prisons. But there is no need for states to wait for a federal initiative; since the early 1970s, California has been a leader in the use of arts-in-corrections programs. Such initiatives should serve to inform national legislation.

Building on these creative initiatives, broader criminal justice reform is equally essential to address the root causes of mass incarceration and promote a more just and equitable society. Public policies aimed to reduce the size of the nation's prison population, such as *First Step Act* need even further measures to remedy the ill effects of excessive sentencing legislation – a legacy of the War on Drugs era. Public programs aimed at treating the mentally ill, feeding the hungry, and sheltering the homeless are long overdue, and overall poverty reduction to help target the root causes of crime are not only feasible, but wholly affordable through fair tax policies.

Regardless of the absolute number of people spending time in prison as retribution for past acts, it's time to envision how to engage their time in ways of dignity that can have social value now and well beyond fulfilling their debt to society. Federal legislation for a national *Carceral Creativity Policy* would achieve a "more perfect Union."

For a deeper exploration of these ideas and the potential for transforming the criminal justice system through creative and intellectual engagement, readers can explore John Whitman's book, *Prisons of Creativity: Artistic Innovation During Incarceration*, which delves further into the intersection of incarceration, innovation, and social justice.